

Article - Tax - General

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§11-239.

(a) (1) In this section the following words have the meanings indicated.

(2) “Data center” means a building or group of buildings used to house computer systems, computer storage equipment, and associated infrastructure that businesses or other organizations use to organize, process, store, and disseminate large amounts of data.

(3) “Department” means the Department of Commerce.

(4) “Opportunity zone” means an area that has been designated as a qualified opportunity zone in the State under § 1400Z–1 of the Internal Revenue Code.

(5) (i) “Qualified data center” means a data center located in the State in which an individual or a corporation, within 3 years after submitting an application for the sales and use tax exemption under this section, has:

1. for a data center located within a Tier I area, invested at least \$2,000,000 in qualified data center personal property and created at least five qualified positions; or

2. for a data center located in any other area of the State, invested at least \$5,000,000 in qualified data center personal property and created at least five qualified positions.

(ii) “Qualified data center” includes:

1. a data center that is a co-located or hosting data center where equipment, space, and bandwidth are available to lease to multiple customers; and

2. an enterprise data center owned and operated by the company it supports.

(6) (i) “Qualified data center personal property” means personal property purchased or leased to establish or operate a data center.

(ii) “Qualified data center personal property” includes:

1. computer equipment or enabling software used for the processing, storage, retrieval, or communication of data, including servers, routers, connections, and other enabling hardware used in the operation of that equipment;

2. heating, ventilation, and air-conditioning and mechanical systems, including chillers, cooling towers, air-handling units, pumps, energy storage or energy efficiency technology, and other capital equipment used in the operation of that equipment; and

3. equipment necessary for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and any other capital equipment necessary for these purposes.

(7) (i) “Qualified position” means a position that:

1. is a full-time position of indefinite duration;
2. pays at least 150% of the State minimum wage;
3. is newly created because a data center begins or expands in a single location in the State; and
4. is filled.

(ii) “Qualified position” does not include a position:

1. created if an employment function is shifted from an existing data center in the State to another data center of related ownership if the position is not a net new job in the State;
2. created through a change in ownership of a trade or business;
3. created through a consolidation, merger, or restructuring of a business entity if the position is not a net new job in the State;
4. created if an employment function is contractually shifted from an existing business entity in the State to another business entity if the position is not a net new job in the State; or

5. filled for a period of less than 12 months.

(8) “Tier I area” means:

(i) a Tier I county as defined in § 1–101 of the Economic Development Article; or

(ii) an opportunity zone.

(b) The sales and use tax does not apply to the sale of qualified data center personal property for use at a qualified data center if the buyer provides the vendor with evidence of eligibility for the exemption issued by the Comptroller.

(c) (1) To qualify for the sales and use tax exemption under subsection (b) of this section, an individual or a corporation shall file an application for an exemption certificate with the Department.

(2) The application must:

(i) demonstrate that the applicant intends to meet the requirements of a qualified data center; and

(ii) include any information the Department requires to evidence the capacity and intention of the applicant to fulfill the commitments set forth in the applicant’s application.

(3) If, based on the information and supporting documentation provided in the application, the Department determines the applicant is eligible for the sales and use tax exemption under subsection (b) of this section, the Department shall certify the eligibility of the applicant.

(d) (1) Each year, the Department shall provide the Comptroller with a list of individuals and corporations that the Department determines are eligible for the sales and use tax exemption under subsection (b) of this section.

(2) Within 30 days after receiving the list described in paragraph (1) of this subsection, the Comptroller shall issue to each individual and corporation listed a certificate of eligibility for the sales and use tax exemption under subsection (b) of this section.

(3) (i) The certificate of eligibility issued under paragraph (2) of this subsection:

1. must be renewed each year; and

2. except as provided in subparagraph (ii) of this paragraph, may not be renewed for more than 10 consecutive years.

(ii) If the individual or corporation invests at least \$250,000,000 in qualified data center personal property, the certificate of eligibility may be renewed for up to 20 consecutive years.

(e) For at least 3 years after the termination of a certificate issued under subsection (d) of this section, each individual or corporation that receives the certificate shall:

(1) maintain a record of:

(i) the amount of sales and use tax that was not paid as a result of the certificate;

(ii) the number of qualified positions created; and

(iii) the investment in qualified data center personal property;

and

(2) allow the Department to inspect the records described in item (1) of this subsection.

(f) (1) The Department may revoke a certificate of eligibility under subsection (d) of this section if any representation made in connection with the application for the certificate is determined by the Department to have been false when made or if the applicant has failed to fulfill the applicant's commitments under the application.

(2) The revocation may be in full or in part as the Department may determine.

(3) The individual or corporation shall have an opportunity to appeal any revocation to the Department before notification of the Comptroller.

(4) The Comptroller may make an assessment against the individual or corporation to recapture any amount of sales and use tax that the individual or corporation has not paid as a result of an exemption under subsection (b) of this section.

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